

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| INNOVATION VENTURES, LLC d/b/a  | § |                              |
| LIVING ESSENTIALS,              | § |                              |
| Plaintiff,                      | § |                              |
|                                 | § | CIVIL ACTION NO. 4:08-CV-232 |
| v.                              | § |                              |
|                                 | § | JURY                         |
| ULTIMATE LIFESTYLES, LLC, ET AL | § |                              |

**PLAINTIFF’S UNOPPOSED MOTION FOR  
PARTIAL DISMISSAL OF CERTAIN TRADEMARK CLAIMS**

Pursuant to Fed. R. Civ. P. 41(a), Plaintiff Innovation Ventures, LLC d/b/a Living Essentials (“Living Essentials”) respectfully files this Unopposed Motion for Partial Dismissal of Certain Trademark Claims and would show this Court as follows:

Living Essentials hereby requests that this Court grant it leave to dismiss from this action with prejudice only those portions of counts in the Second Amended Complaint against Custom Nutrition Laboratories, LLC (“CNL”) that assert common law trademark and statutory trademark claims for product manufactured by CNL for Body Dynamics, Inc. d/b/a/ BDI Marketing (“BDI”). Living Essentials intends that all its other claims, counts, and defenses against CNL remain, including but not limited to all non-trademark claims, counts, and defenses involving BDI.

Living Essentials is mindful of this Court’s recent order regarding additional filings. This dispositive motion is filed because Fed. R. Civ. P. 41

requires consent of the parties or an order of the court in order for Living Essentials to voluntarily dismiss certain claims following the filing of an Answer by Defendants. Living Essentials files this motion because Defendants have not consented to stipulate to an order dismissing these claims. Defendants, however, are not opposed to the relief requested, and as such, Living Essentials files this motion unopposed.

Date: May 22, 2009

By: /s/ Howard L. Close

Howard L. Close,  
Attorney-in-Charge  
State Bar No. 04406500  
WRIGHT BROWN & CLOSE LLP  
Three Riverway, Suite 600  
Houston, Texas 77056  
(713) 572-4321 Telephone  
(713) 572-4320 Facsimile  
[close@wrightbrownclose.com](mailto:close@wrightbrownclose.com)

**Of Counsel:**

Harvey Brown  
State Bar No. 03130500  
[brown@wrightbrownclose.com](mailto:brown@wrightbrownclose.com)  
Patrick McAndrew  
State Bar No. 24042596  
[mcandrew@wrightbrownclose.com](mailto:mcandrew@wrightbrownclose.com)  
WRIGHT, BROWN & CLOSE, L.L.P.  
Three Riverway, Suite 600  
Houston, Texas 77056  
(713) 572-4321 Telephone  
(713) 572-4320 Facsimile

Patrick W. Powers  
State Bar No. 24013351  
patrick@ckptlaw.com  
James J. Doyle, III  
State Bar No. 24036501  
james.doyle@ckptlaw.com  
CASH POWERS TAYLOR  
8150 North Central Expressway, Suite 1575  
Dallas, Texas 75206  
(214) 239-8900 Telephone  
(214) 239-8901 Facsimile

Patrick McCarthy  
Michigan Bar No. P49100  
Michelle Wezner  
Howard & Howard  
101 N. Main Street, Suite 300  
Ann Arbor, MI 48104  
(734) 222-1097 Telephone  
(734) 761-5957 Facsimile  
pmccarthy@howardandhoward.com

**CERTIFICATE OF CONFERENCE**

Counsel for Plaintiff has conferred with counsel for Defendants on at least two occasions regarding this motion to dismiss. Counsel for Defendants have indicated that they are unopposed to the dismissal of certain trademark claims.

\_\_\_\_\_/s/ Howard L. Close\_\_\_\_\_  
Howard Close

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2009, I filed this document electronically and served a copy on the following counsel of record for Defendant Ultimate Lifestyle and CNL as follows:

***Via electronic ECF notification***

Baxter Banowsky  
Banowsky & Levine, P.C.  
12001 N. Central Expressway  
790 Coit Central Tower  
Dallas, Texas 75243

/s/ Howard L. Close  
Howard Close